IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Bail Appl..No. 6287 of 2007()

CRIME NO.151/07 OF WADAKKANCHERY POLICE STATION

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PETITIONER

ARUN, S/O RAMACHANDRAN,
KULUVALAPPIL HOUSE, THEKKUMKARA VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.MADHU RADHAKRISHNAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR.

2. S.I. OF POLICE, WADAKKANCHERY
POLICE STATION, WADAKKANCHERY.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6287 OF 2007

Dated this the 18th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. Altogether, there are 4 accused persons. They face allegations for offences punishable, inter alia, under Secs.324 and 308 of the IPC. The de facto complainant was a passenger in an autorikshaw. On account of an incident which took place shortly prior to the incident proper in this case, the four accused persons in furtherance of their common intention allegedly went after the autorikshaw, stopped the autorikshaw and indulged in acts of violence against the de facto complainant who was the passenger in the autorikshaw. The 1st accused allegedly stabbed the de facto complainant with a knife resulting in very serious injury for the de facto complainant. Investigation is in progress. The petitioner has

not been arrested so far. The petitioner apprehends imminent arrest.

2. In the First Information Statement lodged by the informant, who is related to the victim, the names of only accused 1 and 2 are mentioned and the petitioner is not named. Later, when the victim was questioned, he has given a detailed narration of the incident proper as also the role played by all the four accused persons.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He prays that directions under Sec.438 of the Cr.P.C. may be issued in his favour.

4. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

5. I have already considered an application for anticipatory bail of the 2nd accused in the order dated 2/7/07 in B.A.No. 3973/07. I have already referred to the facts in detail in the said order. I am hence not adverting to the facts in any greater detail in this order. This order must be read in continuation of the said order. It is true that the serious injury was inflicted not by the petitioner; but a co-accused (A1). But that at this stage of

the proceedings can make no difference while considering the prayer for anticipatory bail. The indications available suggest that all the four accused followed the autorikshaw in which the victim was travelling in furtherance of their common intention. All of them played a role in stopping the autorikshaw and in assaulting the victim, though it was only the 1st accused who used the weapon of offence against the victim.

6. In view of the nature of contentions, the Case Diary was directed to be placed before me. I have perused the Case Diary. The statement of the victim has been read over to me in detail. I shall not embark on a detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected at this stage. Suffice it to say that I find no features in this case which can justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

7. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of

the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge